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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74259; File No. SR-NASDAQ-2015-010)

February 11, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Application of Fees to Securities under the Select Symbol Program of Rule 7018(a)(4)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to clarify the fees applicable to the list of securities eligible for the Select Symbol program under Rule 7018(a)(4), and to clarify that the fees of the program are on a per share basis.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify that routing fees under Rules 7018(a)(1) through (3) apply to the securities of the Select Symbol program under Rule 7018(a)(4), and to clarify that fees and credits under the program are calculated on a per share executed basis. NASDAQ recently adopted the Select Symbol program,<sup>3</sup> which provides lower fees for executions received on NASDAQ in a select group of securities where access fees may be discouraging the use of public markets. NASDAQ implemented the program on February 2, 2015. Under the new rule, the Exchange states that it applies the fees under the rule in lieu of other similar fees that would normally apply under Rules 7018(a)(1) through (3). The Exchange does not discuss fees for routing program securities for execution on other markets. In adopting the program, the Exchange did not intend to exclude the related routing fees under Rules

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<sup>3</sup> See Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015)(SR-NASDAQ-2014-128). On January 27, 2015, the Exchange filed an immediately effective filing replacing a security on the list of securities under the rule. See SR-NASDAQ-2015-006 available at <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2015/SR-NASDAQ-2015-006.pdf> (awaiting Commission notice and publication in the Federal Register).

7018(a)(1) through (3). Accordingly, the Exchange is adding clarifying text to the rule that makes it clear that the fees assessed under Rules 7018(a)(1) through (3) for routing orders apply to the securities of the Select Symbol program.

NASDAQ is also amending the rule text to make it clear that the fees and credits under the program are calculated on a per share executed basis, like the other access fees that they replace. The Exchange notes that in adopting the rule, it discussed that it was lowering the access fees for the Select Symbol securities from the current per share executed rates to the new per share executed fees under the program.<sup>4</sup> The Exchange is adding clarifying language to the rule that makes it clear that the program's fees are on a per share executed basis.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed change furthers these objectives because it clarifies the applicability of routing fees under Rule 7018(a) to the securities of the Select Symbol program and how the

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<sup>4</sup> See, e.g., Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594, 596 (January 6, 2015)(SR-NASDAQ-2014-128).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

program fees are calculated. As noted, the rule currently does not discuss fees assessed for routing orders away from NASDAQ for execution, but rather notes that the fees and credits under the program, which relate to executions on NASDAQ, are in lieu of the fees and credits under Rules 7018(a)(1) through (3). The Exchange believes that adding rule text that makes it clear that the normal routing fees apply will avoid any investor confusion concerning the applicability of the fees under the program. Similarly, although discussed in the filing adopting the program, the rule text does not currently reflect that the fees and credits are based on a per share executed basis. The Exchange believes that adding rule text that clarifies that the fees and credits are based on a per share executed calculation will serve to avoid any investor confusion caused by not including the language.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change does not alter the meaning or application of the fees and credits provided under Rule 7018(a)(4), but rather clarifies the applicability of the fees assessed for routing securities away from NASDAQ for execution, and how the fees and credits under the Select Symbol program are calculated. Such clarifying changes impose no burdens on competition whatsoever and, as discussed above, further the purposes of the Act by avoiding potential market participant confusion over the applicability of routing fees under the rule and how the fees and credits of the Select Symbol program are calculated.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that NASDAQ may add the clarifying language immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NASDAQ to clarify the intent of this rule immediately. The Commission sees no reason to delay the addition of language designed to remove ambiguity to the rule. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>11</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested a waiver of this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-010 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2015-010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-010, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Brent J. Fields  
Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).